IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 68 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL PITAMBERBHAI ZAVERBHAI & 5 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR.BHARAT JANI for Appellants No.1 - 5,
MR.A.J.DESAI, ADDL.PUBLIC PROSECUTOR for Opponent,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 15/12/2006

ORAL JUDGMENT

The present appeal arises out of the judgment and order passed by the learned Additional Sessions Judge, Special Court under the Provisions of

Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Mehsana, in Special (Atrocities) Case No.4 of 1991, on 20th January, 1992 whereby the appellants-accused were convicted for the offences punishable under Sections 3 (1) (5) and under Section 3 (15) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the **'Act'**) and sentenced each of them to undergo six months simple imprisonment and to pay a fine of Rs.250/- each, in default thereof, to undergo 15 days simple imprisonment.

2. Heard Mr.Bharat Jani, learned Counsel for the appellants and learned A.P.P., Mr.Desai, for the respondent-State.

3. It is submitted by Mr.Jani that during the course of trial the accused persons and the complainant had arrived at a compromise and there were cordial relationship between the parties and that has been referred to also while passing the order of conviction and sentence at page No.15 of the judgment (page no.77 of the paper-book). However, since the offence punishable under the Act was not compoundable, the Court was supposed to decide the

matter on merit and on the strength of the evidence led by the prosecution witnesses including the complainant. It is clear that leniency in the judgment is shown by the Court while passing the order of sentence.

4. This very order of conviction and sentence is assailed by present appellants on various grounds mentioned in paragraph 4 of the memo of appeal. According to Mr.Jani, one more legal submission is possible in present case over and above the grounds taken in the memo of appeal that the investigation of the case was not undertaken by Officer authorized under Section 17 of the Act and the learned trial Judge could have considered this infirmity, as vital infirmity. That scheme of Section 17 has been held mandatory and therefore the investigation in the case under Atrocities Act conducted by the Officer below the rank of Deputy Superintendent of Police is bad in law and is vitiated.

5. According to Mr.A.J.Desai, learned A.P.P., the conviction recorded by the learned trial Judge is in accordance with the law so far as the appreciation of evidence is concerned. He has fairly submitted

that in the present case, the investigation was not carried out by Deputy Superintendent of Police.

6. There is ample force in argument of Mr.Jani that in reality this was not a question of victimization of the member of Scheduled caste but it was a dispute between the management and the employee. The accused No.1 at relevant point of time was Sarpanch of the Village and accused No.2 was the Up-Sarpanch (Deputy Sarpanch) of the village. The complainant was serving as peon in the Panchayat Office and he was asked to bring the papers by the Up-Sarpanch at the Panchayat Office. According to Mr.Jani because of some dereliction in duty and by not observing the order / direction, the dispute was cropped up and therefore the Panchayat had thought to relieve the complainant from service of the Panchayat. On that count, a hue and cry was made and serious dispute was cropped up amongst the village persons and the accused and his family.

7. It is settled that merely because victim belongs to Scheduled caste and Scheduled tribes, that would not attract the provisions of the Act. The prosecution is supposed to establish by leading

cogent evidence that the offences have been committed, because the victim belongs to Scheduled caste and Scheduled tribe otherwise such offence would not have been committed. Of course, the fact was totally different in case of ***Ramdas and Ors. Vs. State of Maharashtra, reported in 2006 (6) A.I.R. S.C.W. 5675***, wherein the accused was held guilty of the offence punishable under Section 376 of the Indian Penal Code as he was found responsible for the offence punishable under Section 376 of the Indian Penal Code. The Apex Court observed that merely the victim belongs to Scheduled Caste or Scheduled Tribes that by itself does not attract the provisions of the Act.

8. The Panchayat was otherwise authorized to terminate the services of its servant and the complainant could have challenged the unauthorized action of the Panchayat alleging it to be unauthorized before the competent forum and instead of doing so the dispute was brought on the street and that has resulted into some unhappy situation in the village. The trial Judge ought to have held that in reality the dispute between the accused Nos.1 and 2

with complainant was of either master and servant or employer and employee. Leading members of the village i.e. the appellant Nos.3 to 6 were made accused. Accused No.6 has expired and this Court vide order dated 11/7/2003 has held the appeal of appellant No.6 as abated.

9. It is true that the investigation in the present case has not been carried out by Deputy Inspector of Police and the charge-sheet is filed by one Mr.Chudasama, Senior Police Sub Inspector but, it will not be possible for the Court to hold that any prejudice is caused to the accused. It appears that Mr.Jani has erroneously quoted Section 17 of the Act. In reality as per Rule – 7 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules 1995, the Central Government has carved out a scheme under power vested with the Government by Section 23 of the Act. Rule – 7 provides about Investigating Officer. These Rules being Rules of 1995 and the publication of Rules of being 31st March, 1999 in the ordinary gazette of the Government of India. The accused cannot take advantage of this Rule – 7. It is true that Rule–7 has been held mandatory and violation of it has been held prejudicial to defence.

So at time much prior to commencement of the trial or appropriate earlier stage, the investigation should be entrusted and carried out by the Officer authorized under Rule 7 but this offence being offence prior to 31st March, 1999 and the accused was charge-sheeted and tried much prior to the commencement of 1995 Rules, the investigation was carried out by Police Sub Inspector, Mr.Limbachia would not affect the validity of investigation and in turn trial. However, all the facts and the nature of evidence led and the basic contents of the complaint filed are sufficient to show that dispute was between Panchayat authority and the complainant and it was not a case that the complainant was a member of scheduled caste otherwise he could have been either relieved or terminated or harassed by the Panchayat Authority including the accused Nos.1 and 2 much prior to the date of incident. Therefore, it is rightly submitted by Mr.Jani that realizing this thing the complainant decided to compound the matter and on this count and the accused should be given the benefit of doubt.

9. The Court cannot ignore one fact that the complainant himself is present who has been

identified by Mr.Jani on the instructions given by one Advocate, Mr.Prajapati who is present in the Court and is practicing at District Court, Patan. The complainant has informed the Court that the observations made by the trial Court in the final operative order as to compromise arrived at between the parties are true and there was no question of undermining or insulting him or his family members and the same rights and privileges which were enjoyed as Servant / Employee of the Panchayat by the accused, are even, enjoyed today. The complainant has informed that at present one lady Sarpanch is heading the administration of the Panchayat and the atmosphere is cordial.

10. In the result, present Appeal is hereby allowed. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Special Court under the Provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Mehsana, in Special (Atrocities) Case No.4 of 1991, on 20th January, 1992 is hereby quashed and set aside.

10.1 The appellants-accused are acquitted from

the charge of offence punishable under Sections 3 (1) (5) and under Section 3 (15) of the Schedules Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Amount of fine, if paid, by the appellants-accused be refunded to them. Bail Bonds of the appellants accused stand terminated / cancelled.

(C.K.BUCH, J.)

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